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Phyllis C. Borzi
Assistant Secretary
Employee Benefits Security Administration
Department of Labor
200 Constitution Ave, NW
Washington, DC 20210

Re: Comments on Department of Labor FAQs about the Affordable Care Act Implementation (Part XIX)

Dear Assistant Secretary Borzi:

The American Cancer Society Cancer Action Network (ACS CAN) appreciates the opportunity to comment on the question 4 of the “FAQs about Affordable Care Act Implementation (Part XIX)” published on May 2, 2014. ACS CAN, the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society, supports evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. As the nation’s leading advocate for public policies that are helping to defeat cancer, ACS CAN ensures that cancer patients, survivors, and their families have a voice in public policy matters at all levels of government.

Reference pricing can be a useful tool for controlling healthcare costs for non-urgent procedures that can vary substantially in cost across providers or facilities without substantial variation in quality or outcomes. We understand the Department of Labor’s desire to preserve successful reference pricing programs by allowing plans to treat providers that do not accept the reference pricing amount as out-of-network for the purpose of applying enrollee spending to the out-of-pocket maximum. However, we agree with the Department’s concern that reference pricing could also be used as “a subterfuge for the imposition of otherwise prohibited limitations on coverage, without ensuring access to quality care and an adequate network of providers.”

Given the complexities and uniqueness of cancer care, we believe that reference pricing may not be appropriate for cancer treatment at this time. However, some employers are pursuing reference pricing for certain preventive screenings. For instance, there is increasing interest among health plans in instituting reference pricing for colonoscopies, an important tool for cancer screening and prevention.

In general, successful use of reference pricing, such as CalPERS’ program for knee and hip replacements, requires substantial enrollee education and a commitment to transparency on the part of the health plan and providers. Additionally, reference pricing must be limited to

those non-urgent, schedulable services for which a patient can reasonably “shop around,” and the reference price set by the plan must be accepted by an adequate number of providers. Most cancer care does not lend itself to reference pricing.

ACS CAN recommends the following consumer protections for reference pricing structures before allowing a health plan to treat providers that do not accept the reference price as out-of-network:

1. **Monitoring use of reference pricing.** While reference pricing can be a useful cost-containment tool for some procedures, a plan making extensive use of reference pricing for a wide variety of services would effectively be no different from a fixed dollar indemnity plan, which can only be sold as a supplement to minimum essential coverage. We encourage the Department of Labor to conduct regular oversight to ensure plans are not utilizing reference pricing as a way to restrict coverage for certain procedures and to make these findings public.
2. **Ensuring high quality care.** Any reference pricing program must include certain quality measures to ensure enrollees are receiving high valued health care services. Any quality measurement program must include patient-reported outcomes. Enrollees should be provided with information describing how the reference pricing program ensures high quality care.
3. **Disclosure prior to plan selection.** If an employer offers multiple health plans, any reference pricing structures must be disclosed to potential enrollees during open enrollment, including a complete list of services and procedures subject to reference pricing, the reference price, and a complete list of providers or facilities that accept the reference price and any potential out-of-pocket cost to the consumers.
4. **Enrollee education.** All enrollees should be provided with a list of the services for which reference pricing is in place, the reference price for each service, and the providers and facilities accepting the reference price for each service. Enrollees seeking to access reference priced services should have a designated point-of-contact for questions and clear guidance on requesting exceptions to the reference pricing policy.
5. **Adequate providers and facilities accepting the reference price.** Health plans must ensure that reference pricing does not unduly limit access to services. Facilities and providers accepting the reference price must be adequate in number, within a reasonable geographic distance, and available within a reasonable timeframe.
6. **Exceptions processes.** If an enrollee is unable to access a reference priced service at one of the designated locations due to distance, appointment wait times, or other factors, an exceptions process should be available to allow the enrollee to access the service at in-network cost-sharing at a facility not accepting the reference price. In these cases, the enrollee must not be subject to balance billing or any additional costs above what

the enrollee would have paid if the procedure were conducted at one of the designated locations.

7. **No reference pricing in the individual and small group markets.** We believe it would be premature for the Department of Labor and Department of Health and Human Services to allow reference pricing in the individual and small group markets. To date, successful reference pricing programs have been limited to extremely large employers (such as CalPERS) with significant market power and customer service resources. The individual and small group markets do not have the enrollee education, customer service, and provider education infrastructure necessary for reference pricing to be run in a consumer-friendly, successful manner.

We appreciate the opportunity to comment on the Department of Labor's FAQs about Affordable Care Act Implementation (Part XIX). If you have any questions, please feel free to contact me or have your staff contact Laura Skopec, Senior Analyst, at laura.skopec@cancer.org.

Sincerely,



Kirsten Sloan
Senior Policy Director
American Cancer Society Cancer Action Network